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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 660

[Docket No. 141103918-4918-01]

RIN 0648-BE58

International Fisheries; Pacific Tuna Fisheries; 2014 Commercial Fishing for Pacific Bluefin Tuna in the Eastern Pacific Ocean; Commercial Retention Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule for an emergency action.

SUMMARY: NMFS is reopening the U.S. commercial fishery for Pacific bluefin tuna (PBF) in the eastern Pacific Ocean (EPO) until the 500 metric ton (mt) catch limit is reached. If the 500-metric ton limit, which was established under the Tuna Conventions Act (TCA) and regulations implementing Resolution C-13-02 of the Inter-American Tropical Tuna Commission (IATTC) in the EPO, is not met, the fishery will close on December 31, 2014. This reopening of the fishery vacates the closure made by NMFS on September 5, 2014. Following the closure, NMFS received updated information indicating that only 404 mt of the 500 mt catch limit was caught. Thus, the closure was imposed prematurely. This rule also imposes a 1 mt trip limit on retention of PBF in the EPO by commercial vessels as an emergency action under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

DATES: Effective [insert date of filing with the Office of the Federal Register], through

December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Mark Helvey, NMFS West Coast Region, 562-980-4040, Mark.Helvey@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS takes this action in accordance with the TCA, 16 U.S.C. 951 et seq., and under section 305(c) of the MSA, 16 U.S.C. 1855(c).

NMFS published a final rule in the Federal Register (79 FR 28448, May 16, 2014) implementing Resolution C-13-02, (“Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean”) adopted by the IATTC at its 85th Meeting in June 2013. Resolution C-13-02 provided for an IATTC-wide (applicable to all members and cooperating non-members of the IATTC fishing in the EPO) commercial catch limit of 5,000 mt and up to 500 mt set aside for IATTC members having a historical catch record of PBF in the EPO. Because the United States has a historical record of PBF catch in the EPO, the U.S. commercial fishing fleet qualifies for the 500 mt catch limit of PBF in the Convention Area for 2014, as explained in the final rule. The final rule further explains that when the IATTC-wide 5,000 mt catch limit is reached, the U.S. commercial fleet may continue to target, retain, transship, or land PBF until the 500 mt limit is reached.

In late August 2014, NMFS received information that the PBF catch by U.S. purse seine vessels was 454 mt. As a result, on September 5, 2014, NMFS closed the fishery, believing that the United States was close to reaching the 500 mt limit (79 FR 53631, September 10, 2014). Following the closure, NMFS received updated landings data indicating that the total U.S. commercial catch in 2014 was 403.5 mt, not 454 mt. Since then, NMFS informed the Pacific Fishery Management Council (Council) of the

early closure at their meeting in Spokane, Washington on September 13, 2014, and the Council recommended that NMFS reopen the commercial fishery and establish a 1 mt trip limit until the 500 mt catch limit is reached. NMFS finds the Council's request consistent with several of the MSA national standards for fishery conservation and management within the context of the Council's Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. While PBF are in an overfished and overfishing condition, the stock is being managed under IATTC Resolution C-13-02 in efforts to curtail catches in the EPO. The Council's recommendation ensures that the remainder of the 500 mt will be available to the U.S. commercial fisheries and harvested in measured increments of 1 mt or smaller, which substantially reduces the risk of exceeding the limit while allowing for resource utilization. Its recommendation adheres to National Standard 1 of the MSA – "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." NMFS also recognizes that the number of U.S. vessels able to catch PBF is small because interacting with PBF is not a common event and that their catch can be readily monitored because some vessels capable of efficiently catching PBF in 1 mt increments or less (e.g., drift gillnet) will already have federally trained observers onboard to monitor the catch. In addition, NMFS plans to work with fish buyers and State of California authorities to monitor PBF landings. The Council's recommendation also supports National Standard 5 – "conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose." The 1 mt trip limit allows for the final 96 mt of the 500 mt overall limit to be

harvested in a calculated and efficient way rather than taking the risk that the 500 mt limit will be exceeded within one or two trips (i.e., by purse seine gear).

The trip limit also comports with MSA National Standard 8 – “conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirement of paragraph (2), in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities.” Allowance for the retention of PBF in 1 mt increments can add to U.S. harvesters’ portfolios of marketable species and minimizes lost economic opportunity until the 500 mt limit is reached, thereby benefiting West Coast fishing communities.

NMFS recognizes that there are situations where commercial fishermen may inadvertently catch PBF during their fishing operations while targeting other species. The 1 mt trip allowance avoids the requirement to discard PBF catches until the 500 mt catch limit is reached and serves to minimize bycatch. The Council’s request comports with National Standard 9 – “conservation and management measures shall, to the extent practicable, (a) minimize bycatch and (b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.”

Lastly, the 1 mt limit ensures that National Standard 10 – “conservation and management measures shall, to the extent practicable, promote the safety of human life at sea” – is met. Correcting the error by reopening this fishery without a trip limit could create a derby-style fishery; that is, a fishery of brief duration during which harvesters

race, regardless of weather or ocean conditions, to catch as much as they can before the fishery closes again. Specifically, fishermen able to catch PBF in large quantities might risk the dangers of unsafe sea conditions just to ensure a last catch opportunity,

This emergency trip limit will be effective only through the end of 2014, which is less than the maximum 180 days allowed for emergency rules issued under section 305(c) of the MSA.

NMFS acknowledges the petition received from the Center for Biological Diversity (CBD) requesting NMFS to undertake several actions pertaining to PBF, including prohibiting fishing or, as an alternative, establishing annual catch limits and a permanent minimum size requirement to protect age classes 1 to 2 from fishing mortality. This action to reopen the fishery does not pertain to the petition. Rather, the action corrects an error and sets trip limits under an emergency action to ensure that the 2014 catch limit adopted by the IATTC is not exceeded. The comment period for the petition ended on September 22, 2014. Based on NMFS' current review of those comments, as well as the outcome of the resumed 87th Meeting of the IATTC in late-October, and the Council's scheduled action in November to establish a more restrictive bag limit for the recreational PBF fishery, NMFS will determine the need to proceed with regulations requested by the CBD to prohibit PBF fishing or establish size limits.

NMFS' policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997) specify the following three criteria that define an emergency situation and justification for final rulemaking: (1) the emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be

addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS' policy guidelines further provide that an emergency action is justified for situations, in which it would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone.

NMFS has determined that setting a 1 mt trip limit on PBF catches meets all three criteria. The temporary rule results from recent, unforeseen events or recently discovered circumstances pertaining to an update on preliminary catch data. The best available information at the time of the closure indicated that the catch limit was less than 50 mt from being reached. The use of purse seine gear is an efficient method for capturing schooling fish and the purse seine vessels that had been harvesting PBF had the capacity to catch more than 50 mt in a single trip. Consequently, NMFS responded by closing the fishery on September 5, 2014, only to later learn that the actual catch was 403.5 mt, not 454 mt. The Council's recommendation for a 1 mt trip limit allows for reopening the fishery while establishing a precautionary management measure designed to prevent exceeding the 500 mt limit. For the reasons explained below in the "Classification" section, the benefits of emergency action outweigh the value of the normally applicable notice and comment procedures.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this emergency action to promulgate temporary regulations for setting a 1 mt trip limit under the authority of section 305(c) of the MSA is necessary to prevent bycatch, in the form of

regulatory discards, of a species in an overfished and overfishing condition. The Council's request to reopen the fishery with a per trip retention limit will provide limited economic opportunities to harvesters and fishing communities, while maintaining catch levels within limits to meet U.S. obligations as a member of the IATTC. This request is consistent with the TCA, MSA, and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for advanced public comment. The benefits of implementing this action immediately outweigh the value of advance notice and public comment. Reopening the fishery corrects an error. Failure to correct that error would cause confusion and undermine the purpose of the underlying regulation. Imposition of the 1 mt retention limit is an emergency action and prior notice and opportunity for advanced public comment would be contrary to the public interest. Delaying action intended to allow for the retention of PBF in increments of up to 1 mt would increase the likelihood of waste and economic loss. There is no other action that NMFS can take through the normal rulemaking process that would enable the agency to allow for the commercial retention in fisheries interacting with PBF in time before the end of the year when the availability of the 500 mt catch limit expires. The urgency to issue a final rule that provides an opportunity for harvesters to retain up to 1 mt in the event they catch PBF reduces the likelihood that the species would be targeted while allowing for economic opportunities to persist.

Correcting the premature closure by reopening the fishery relieves a restriction, and, therefore, is not subject to the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). For the same reasons provided above, pursuant to 5 U.S.C. 553(d)(3), the AA

finds good cause to waive the full 30-day delay in effectiveness for imposition of the 1 mt retention limit. It would be contrary to the public interest if the retention limit does not become effective immediately and concurrently with the reopening of the fishery because an incentive would remain for harvesters to target PBF with gear capable of exceeding the catch limit in one or two trips, thus undermining the purpose of the regulations.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866. A Regulatory Impact Review was completed and is available upon request from the NMFS, West Coast Region (see ADDRESSES).

Authority: 16 U.S.C. 951 et seq. and 16 U.S.C. 1801 et seq.

Dated: November 7, 2014

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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